

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1372-2023 (O & M)
Date of decision: 12.09.2024

Smt. Krishna Appellant(s)

V/s

Umed ...Respondent(s)

CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Gurasis Singh, Advocate,
for Mr. Saurabh Dalal, Advocate,
for the appellant.

JASJIT SINGH BEDI, J.

The present application under Section 378(4) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 16.02.2023 passed by the Additional Sessions Judge, Jind.

2. The present case was instituted on a complaint filed by the complainant-appellant-Krishna (hereinafter to be referred as the appellant) wife of Satish son of Ramdhari, resident of village Dilluwala against accused Satish, Gurmail, Umed (respondent), Suresh and Smt. Meena Devi,

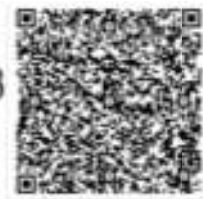
before the Court of learned Illaqa Magistrate on the allegations that her



::2::

family members were residing in a Farm House constructed at a distance of 10 acres from the abadi of village. Accused Nos. 1 and 2 (Satish and Gurmail) borrowed money from her husband about two years ago and had agreed to repay the said amount alongwith interest thereon @ 2% per month but they were avoiding the payment of the said amount on one or the other pretext. Thus, on 16.02.2013, she went to the house of accused Satish situated at Village Raichandwala at about 8:00 A.M., where accused Nos. 1, 2 and 5 were present on the ground floor of the house. Umed and Suresh i.e. accused Nos. 3 and 4 were standing on the roof of the house. Accused Nos. 1 and 2 asked the complainant, who she was and she replied that she was the wife of Satish of Village Dilluwala and she had come to their house to take money. Thereupon both accused Nos. 1 and 2 caught her from her arms and accused Nos. 3 and 4 gave a lalkara to kill her and to teach a lesson for visiting their house for demanding money. Accused no.5 gave a kick blow one by one on the stomach of the complainant three times. Thereafter, accused nos. 3 and 4 came there from the roof of the house and they gave fist blows to her. They threatened her that in case she again visited their house for demanding money, they would kill her. On hearing the noise, many persons from the village abadi gathered at the spot and all the accused persons ran away inside the rooms of their houses saying that today she was saved and in future they would kill her. Thereafter, she started going towards her house but she fell down in the way. Blood started through her urine.

When she reached her house, her husband was present there. She was



::3::

suffering from severe pain in her stomach. Immediately, she was shifted to GH, Jind. Her MLR was conducted in GH Jind vide MLR No. MM/529/2013 dated 16.02.2013 but the Medical Officer of GH Jind, due to her serious condition referred her to PGIMS, Rohtak. On 16.02.2013, she was shifted to PGIMS, Rohtak and was admitted vide CR No. 12135 and remained admitted till 18.02.2013. Her ultrasound was conducted in PGIMS, Rohtak. She was still under treatment from GH, Jind. Therefore, the complaint had been filed.

3. After the preliminary evidence, all the accused were summoned for the offences punishable under Sections 323, 506 and 313 read with Section 149 of the Indian Penal Code.

4. On appearance of the accused Umed, vide order dated 26.08.2019 passed by the Court of the then learned Judicial Magistrate Ist Class, Jind, committed the case to the court of Sessions and accused Satish, Gurmail, Suresh and Smt. Meena Devi were declared proclaimed persons. The present case was entrusted to the Court of the then learned Additional Sessions Judge, Jind.

5. On finding a prima facie case against accused Umed for the offences punishable under Sections 325, 313 and 506 read with Section 149 of The Indian Penal Code, charges against him were framed by the Court of the then Additional Sessions Judge, Jind vide order dated 14.01.2020, to which, he pleaded not guilty and claimed trial.



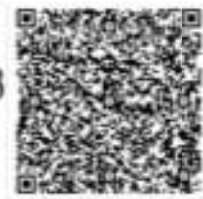
::4::

6. In order to prove its case against the accused Umed, the prosecution/complainant examined in total six witnesses:-

CW1 Pushpa Singh Gambhir, Incharge of Pushpa Ultrasound Centre, Gohana Road, Jind stated that on 11.02.2013 she conducted the ultrasound of Krishana wife of Satish report Ex.C1. She placed on file photocopy of film as Mark-A. She further stated that she had handed over the original report to Krishana and as per report Krishana was pregnant and there was foetus of nine weeks in the womb of Krishana Devi.

CW2 MHC Kamal Singh No.840/Jind stated that he had brought original rojnamcha and DD No.24A dated 17.02.2013. Ex.C2 was the attested copy of the original rojnamcha.

CW3 Krishna complainant deposed that on 16.02.2013 at about 08-00 a.m. she reached at the house of accused Satish son of Karan Singh for demanding Rs.4,60,000/- which was borrowed by accused Satish from her husband. When she entered in the house of accused Satish then accused Satish, accused Gurmail, accused Meena wife of Satish were already on the chairs in a room on ground floor and accused Umed @ Meda and accused Suresh were standing on the roof of the first floor. Accused Satish inquired about her identity, on which she told him that she was Krishana Devi wife of Satish from village Dilluwala and she had come to take that amount of Rs.4,60,000/- alongwith interest. On hearing this accused Satish and Gurmail caught her and accused Meena kicked in her stomach. Accused Suresh and accused Umed came down stairs and slapped her. All the accused



::5::

also threatened her that if she again came to their house for demanding money then they would kill her. Then she raised an alarm and they went into the room of their house. She also left for her house. On the way when she urinated, she found that there was blood in her urine. She reached her house with great difficulty. She narrated the whole incident to her husband. She was having severe stomach pain and her husband took her to General Hospital, Jind where the doctor examined her thoroughly and even at that time blood was still passing in her urine. Thereafter, she showed all her reports to a lady doctor and after perusal of her report, the doctor said that a miscarriage had taken place due to injuries and she was referred to PGIMS Rohtak. Thereafter, she alongwith her husband reached at PGIMS, Rohtak in an ambulance where the doctor examined her and ultrasound was conducted. It was found that her fetus had miscarried due to injuries. In this regard, she moved an application Ex.C3 to the police. The police, during investigation cancelled her case and then she filed criminal complaint Ex.C4.

CW4 Dr. Mahesh, CMO, PGIMS, Rohtak proved on file MLR of complainant Krishana as Ex.C6. He also stated that on 26.04.2013 he also gave his opinion Ex.C8.

CW5 Satish, husband of complainant deposed in the same manner in which evidence was given by CW3 Krishana, complainant.

CW6 Dr. Sonia Dahiya, Associate Professor Gynecologist Department, PGI Rohtak stated that on 16.02.2013 she treated patient



::6::

Krishana Devi and prepared document Ex.C9 (total eight pages). She prepared the discharge slip Ex C10.

7. After recording the evidence of the complainant/prosecution. the statement of the accused was recorded under Section 313 of The Code of Criminal Procedure, 1973. The entire incriminating evidence and documents brought on record by the prosecution were put to him. The accused denied the evidence of the prosecution and pleaded his false implication.

8. In the defence evidence, the accused examined one witness. DW1 Mahabir, Ex. Sarpanch, deposed that he was Sarpanch of village Raichandwala in the year 2013. On 16.02.2013, Krishna wife of Satish, resident of Dilluwala did not come to the house of accused Umed or to the house of his brother. No quarrel between Krishna or the family of accused had taken place at the house of accused. A criminal case was also registered by Krishna against accused Umed and his brothers but during investigation the said case was found false. He had given his affidavit to the effect that no occurrence had taken place as alleged by Krishna on 16.02.2013 in their village at the house of accused Umed. The affidavits of other villagers were also submitted by them which were taken by the police and photocopy of his affidavit was Ex.DWI/A and copy of joint affidavit was Ex.DW1/B. Accused Umed had been falsely implicated in this case alongwith his brothers. Umed accused resided separately from his brother for the last 15-16 years.



::7::

Thereafter, the accused tendered cancellation report Ex.DY (already exhibited as Ex.CW6/A) in his defence evidence and closed the same vide his statement.

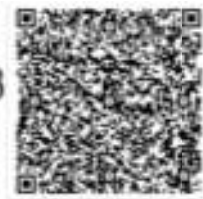
9. Based on the evidence led, the respondent-accused came to be acquitted vide a judgment dated 16.02.2023.

10. The aforementioned judgment is under challenge before this Court.

11. The learned counsel for the appellant contends that the evidence of the appellant as CW-3 went un rebutted. CW-5 Satish, husband of the appellant deposed in the same manner in which the evidence was given by CW-3/Krishna. The Lower Court wrongly ignored the evidence and facts from the testimony of the complainant and other witnesses. The medical experts examined by the prosecution who provided medical aid to the injured had also supported the prosecution case. All the prosecution witnesses were cross-examined at length by the defence but nothing favrouable came from there mouth and thus, the evidence was fully reliable to convict the accused. He, therefore, prays that the leave to appeal be granted.

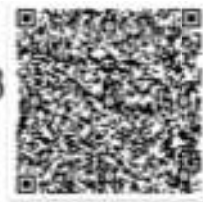
12. We have heard the learned counsel for the appellant and examined the record.

13. As per the allegations made by the complainant Krishna, on 16.02.2013 in the morning at about 08-00 a.m. she had gone to village Raichandwala to the house of accused Satish (already declared as



::8::

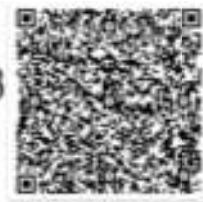
proclaimed person) for demanding Rs.4,60,000/- which were borrowed by him from the husband of complainant Krishna. At the house of accused Satish, he alongwith accused Gurmail and Meena wife of Satish were present on the ground floor and accused Umed and Suresh were present on the roof of the house. Accused Satish inquired about the identity of the complainant on which she disclosed that she was Krishna Devi wife of Satish and she had come to take Rs.4,60,000/- alongwith interest which was borrowed by accused Satish. Thereafter, accused Satish and Gurmail caught her arms and accused Meena gave kicks in her stomach. Thereafter, accused Umed and Suresh also came downstairs and slapped her. Thereafter, she came back and on the way when she urinated, she found that blood was coming in her urine. After reaching home she disclosed about the incident to her husband and due to pain in stomach her husband took her to General Hospital, Jind from where she was referred to PGIMS, Rohtak. After her medical examination the doctor told them that due to injuries caused to her, her foetus had miscarried. To prove these allegations, complainant Krishna herself appeared in the witness box and also so stated in her evidence. CW5 Satish also corroborated the evidence of CW3 Krishna. However, even if all the allegations made by complainant Krishna are taken to be true even then no case is made out under Section 313 of IPC as complainant Krishna neither in her complaints Ex.C4 or Ex.C3 nor in her evidence stated that accused Umed alongwith other co-accused were having knowledge of her pregnancy and that they had caused injuries to her



::9::

knowing the said fact. Admittedly, at the time of the alleged incident complainant Krishna was pregnant of about ten weeks and pregnancy of ten weeks is not visible to the naked eye. Therefore, in the absence of allegations and evidence that the accused were having knowledge with regard to pregnancy of complainant and knowing the said fact they caused injuries to her, no offence under Section 313 of IPC is made out. In this regard, reliance can be placed on judgment of this Court in case titled as Bishamber Singh and others vs. State of Punjab, Criminal Appeal No.163-SB of 2002 decided on 07.11.2012 wherein the facts were that the accused caused injuries to the complainant and her family members. After the complainant went to her house she developed some problem at night. Next day she was got admitted in the hospital where she was medico-legally examined and was referred to gynecologist treatment where on 27.08.1999, she under went abortion on account of injuries. On these facts it was held by this Court in para nos. 18 and 20 as under:

"18. This Court in authority Bagirath's case (supra) categorically held that the appellants had no knowledge of the pregnancy and pregnancy was not visible to naked eye, the appellants cannot be convicted under Section 313 of the IPC. It has been further held that they can be convicted under Section 325 of the IPC. On the facts of the present case, according to complainant- Nazeeran Bibi victim (PW-1) she was having pregnancy of four months. It is not the case of any of the prosecution witnesses that the said pregnancy was visible to the naked eye. Otherwise also in normal practice, pregnancy of four months is not visible to the naked eye. There is no other direct



::10::

or indirect evidence that the appellants have the knowledge about the pregnancy of Nazeeran Bibi complainant.

20. So, in view of the authorities Pato Devi's case (supra) and Bagirath's case (supra), the conviction of the appellants under Section 313 of the IPC cannot be maintained."

14. In view of the above discussion, the complainant/appellant has failed to prove that accused Umed has committed the offence under Section 313 of IPC.

15. Now it is to be determined whether there is sufficient evidence to prove beyond reasonable doubt that accused Umed was involved in the alleged incident and had caused injuries to complainant-Krishna. A perusal of complaint Ex.C4 and evidence of CW3 Krishna Devi complainant shows that only vague allegations have been made against the accused Umed and no specific injury has been attributed to him. CW3 Krishna stated in her evidence that after accused Suresh and Gurmail caught her arms and Meena gave kicks in her stomach accused Umed and Suresh came downstairs and slapped her. The allegations made by CW3- Krishna do not appear to be probable as she was alone during the alleged incident and when three accused namely Satish, Gurmail and Meena (already declared as proclaimed persons) were allegedly causing injuries to Krishna (complainant) then there was no necessity for accused Umed to come and slap her. It is also pertinent to mention that there was a money dispute between the husband of the complainant and accused Satish and therefore, the false implication of all the family members of accused Satish cannot be ruled out.



::11::

16. It is the basic principle of criminal jurisprudence that the prosecution has to prove its case beyond reasonable doubt. In the present case, after going through the record as well as the deposition of CW3 Krishna and CW5 Satish, it is clear that the prosecution/complainant has not been able to prove her case beyond reasonable doubt and hence the benefit of doubt is given to the accused Umed.

17. As to how an application for leave to appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

18. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason

to interfere with the well reasoned judgment dated 16.02.2023 passed by the



::12::

Additional Sessions Judge, Jind, whereby accused-respondent Umed has been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 12, 2024
sukhpreet

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No